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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/684,312

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Donna Gail Schneider

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3321

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT

PAPER NUMBER

3749

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/684,312	Applicant(s) SCHNEIDER, DONNA GAIL	
	Examiner Stephen Gravini	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Deichler, Jr. (US 6,708,604). Deichler discloses the invention comprising:

a collapsible frame **10** for suspending an item above a heat source, the frame comprising:

a plurality of panels **14, 16, 18** forming sides of the frame when the frame is erected, wherein a side of the frame comprises a variable configuration of panels **34, 36** the configuration being selected by a user of the device to adjust an attribute of the enclosure when the device is in use for heating, the attribute including at least one of: how much of the side is enclosed, which portion of the side is enclosed, a volume substantially enclosed by the frame and an overall shape of the frame as shown in figure 1. Deichler also discloses the claimed first panel being detachably coupled to a second panel and wherein the first and second panels are coupled to one another to erect the frame and detached from one another to collapse the frame also shown in figure 1, wherein the first and second panels are detachably coupled substantially along their adjacent edges as shown in figures 3 and 4, wherein the side of the frame is selectively configured by selectively employing a panel having particular physical dimension that affects the attribute of the enclosure at column 5 lines 11-39, wherein the side of the frame is selectively configured by selectively positioning a panel in a

position relative to the remainder of the frame, the position affecting the attribute of the enclosure at column 5 lines 40-52, wherein the side of the frame is selectively configured by selectively choosing among, in constructing the side, a first panel having a first measurement in a given dimension and a second panel having a second measurement in the dimension, the second measurement being different than the first at column 4 lines 1-20 wherein the dimension is measured in a substantially vertical direction relative to the vertical direction of the erected frame while in use as shown in figure 1 and disclosed in the summary of the invention, wherein the side of the frame is selectively configured by employing a selectable quantity of panels, wherein the attribute is affected by the quantity of panels employed in forming the side as shown in figures 2 & 3, wherein the side of the frame is selectively configured by selectively employing a combination of panels to form the side and selectively positioning the panels to affect both position and coverage how much of the side is enclosed and which portion of the side is enclosed as shown in figure 1, wherein the side of the frame is selectively configured by selectively employing a combination of panels to form the side and selectively positioning the panels to affect both how much of the side is enclosed and at what position the transverse member is supported by the frame also shown in figure 1, wherein the side of the frame is selectively configured by selectively employing a combination of panels to form the side and selectively positioning the panels to affect both which portion of the side is enclosed and at what position the transverse member is supported by the frame at column 4 line 63 through column 5 line 10, wherein the side of the frame that is selectively configurable comprises panels that support the

transverse member as shown in figure 1, wherein a panel comprises a first feature that engages with a mating second feature of the transverse member as shown in figures 2 & 3, a transverse member for supporting the item to be heated, the transverse member being coupled to the frame as shown in figure 1, wherein the transverse member is removably coupled to the frame and is removed from the frame when the frame is collapsed also shown in figure 1, and wherein the transverse member, when coupled to the frame, performs at least one of: maintaining shape of the frame, improving rigidity of the frame and holding in place the panels that form the frame at column 6 lines 5-50.

Response to Arguments

Applicant's arguments filed May 3, 2008 have been fully considered but they are not persuasive.

As an initial matter, the anticipatory rejection is no longer rejected as a statutory bar, but is still considered to be anticipated by Deichler as rejected above. This is not a new rejection, but rather a different section under the anticipatory rejection statute.

Rule 131 affidavit

The rule 131 affidavit does not overcome the anticipatory rejection above, because affidavit and supporting photographs do not define the invention with the same scope as claimed. Paragraphs 4-6 do not distinguish the claimed invention in a matter to overcome the anticipatory rejection.

Particularly paragraphs 6 (a) through (g) do not discuss that the claimed variable configuration of frame panels selected by the user of the device to adjust an attribute of the enclosure when the device is use for heating. While paragraph 6 (c) declares sheet

2 shows the assembled unit forming a space substantially closed on all sides as might be appropriate for baking or smoking, it does not show the claimed configuration being selected by a user. Also sheet 2 is mostly illegible. An Adobe ®-like photograph added to the file might clarify the illustrated invention, but as viewed, sheet 2 (and all other photograph sheets) now shows disconnected panels and not the declared invention as claimed.

Paragraph 6 (d) declares that sheet 4 shows a rectangular frame **although other shapes could easily have been formed** by employing a different quantity of and/or appropriately designing of, the side panels that form the frame (emphasis added). This paragraph and sheet does not show that the claimed variable configuration of frame panels selected by the user of the device to adjust an attribute of the enclosure when the device is use for heating. The “could easily have been formed” is construed as speculation that does not antedate the prior art used in the rejection above.

Sheet 5 is completely illegible such that declaration in paragraph 6 (e) does not show the claimed features in relation to sheet 3. Paragraph 6 (f) does not declare the claimed invention over the rejection above.

Finally paragraph 6 (g), in referring to sheet 7, also makes a speculative statement with respect to the panel insertion order. Also the different panel measurements are not shown such that the rejection is proper.

Under current Office practice, the claimed invention is defining the “same patentable invention.” When the reference in question is a noncommonly owned U.S. patent or patent application publication claiming the same invention as applicant and its

publication date is less than 1 year prior to the presentation of claims to that invention in the application being examined, applicant's remedy, if any, must be by way of 37 CFR 41.202 instead of 37 CFR 1.131. If the reference is claiming the same invention as the application and its publication date is less than 1 year prior to the presentation of claims to that invention in the application, this fact should be noted in the Office action. The reference can then be overcome only by way of interference. See MPEP Chapter 2300.

The rule 131 affidavit is not proper and applicant is advised that the reference Deichler can be overcome only by way of interference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272

4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on 571 272 6785. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Stephen Gravini/
Primary Examiner, Art Unit 3749